

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JEFFREY W. MARSOLF
Claimant

VS.

LECHNER LANDSCAPE & LAWN SRV.
Respondent

AND

ACCIDENT FUND INS. CO. OF AMERICA
Insurance Carrier

Docket No. 1,018,345

ORDER

Claimant requested review of the Post-Award Medical Order by Administrative Law Judge John D. Clark. This is a post-award proceeding for medical benefits. The case has been placed on the summary docket for disposition without oral argument.

RECORD AND STIPULATIONS

The Board has considered the April 11, 2006 Post Award Hearing transcript and exhibits.

ISSUES

This claim, for injuries to claimant's neck, bilateral upper extremities, hearing loss, tinnitus and all body parts affected, was resolved by settlement hearing on August 15, 2005. The right to future medical treatment was left open.

On November 29, 2005, claimant filed an application for post award medical treatment for carpal tunnel syndrome. The Administrative Law Judge (ALJ) found the claimant's carpal tunnel syndrome was not related to the claimant's accident on February 21, 2004.

The claimant requests review of whether his current complaints are related to his February 21, 2004 accidental injury.

Respondent argues the claimant's current carpal tunnel complaints are caused by his work with his current employer and the independent medical doctor concluded the carpal tunnel syndrome was not related to the February 21, 2004 accidental injury. Consequently, respondent requests the Board to affirm the ALJ's Post-Award Medical Order denying claimant's request for medical treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

As a result of his work-related injuries, the claimant had a C5-C6 and C6-C7 discectomy and interbody fusion on October 8, 2004. Dr. E. O. Abay performed the surgery. The parties settled the claim by an agreed award based on a 15 percent permanent partial impairment of function to the body as a whole on August 15, 2005. As previously noted the right to future medical treatment was reserved.

On November 29, 2005, claimant filed an application for post award medical. Pursuant to agreement of the parties, on January 17, 2006, the ALJ ordered an independent medical examination by Dr. Paul S. Stein.

Claimant's attorney argued at the post-award hearing that prior diagnostic studies in October 2004 had revealed claimant's bilateral carpal tunnel but his initial concern had been his neck complaints. Claimant now seeks treatment for his carpal tunnel syndrome.

Respondent's attorney argued claimant had quit working for respondent before the August 15, 2005 settlement hearing and any current symptoms are more probably related to claimant's current employment where he performs similar work compared to what he did for respondent. Moreover, Dr. Stein concluded claimant's current complaints were not related to the February 21, 2004 accident.

In a post award medical proceeding, an award for additional medical treatment can be made if the trier of fact finds that the need for medical care is necessary to relieve and cure the effects of the original accidental injury which was the subject of the underlying award.¹

At the post award hearing the sole medical evidence was Dr. Stein's independent medical examination report. Dr. Stein conducted an examination of the claimant on February 15, 2006. The doctor noted both the Tinel's and Phalen's tests were negative bilaterally. However, the doctor opined:

¹ See K.S.A. 2004 Supp. 44-510k(a).

The current numbness and tingling in his hands which occurs occasionally at night is likely secondary to carpal tunnel syndrome which is not causally related to the incident on 2/21/04. There is no other specific injury directly related to that incident. He is at maximum medical improvement.²

The Board adopts the ALJ's conclusion claimant has failed to meet his burden of proof that the carpal tunnel syndrome is related to his February 21, 2004 work-related accident. Consequently, the ALJ's denial of claimant's request for treatment is affirmed.

The Board is mindful that claimant's attorney made an assertion that claimant's neck continued to bother him. Again the sole medical evidence provided by Dr. Stein indicated claimant had a satisfactory result from the surgical discectomy and fusion. The examination of claimant's neck revealed no focal, trigger point tenderness in the cervical spine or musculature except for some mild discomfort at the C6-C7 interspinous ligament. No muscular spasm was present. Finally, the doctor concluded claimant was at maximum medical improvement. And no doctor has opined that claimant's current upper extremity symptoms are attributable to cervical neuropathy.

AWARD

WHEREFORE, it is the decision of the Board that Administrative Law Judge John D. Clark's April 11, 2006 Post-Award Medical Order denying claimant additional medical treatment is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

² P.A.H. Trans., Cl. Ex. 1 at 5.

c: Joseph Seiwert, Attorney for Claimant
 Jeffery R. Brewer, Attorney for Respondent and its Insurance Carrier
 John D. Clark, Administrative Law Judge
 Paula S. Greathouse, Workers Compensation Director